RECENT IMPORTANT DECISIONS

AGENCY—ACCOUNTING FOR PROCEEDS OF ILLEGAL CONTRACT OF SALE OF INTOXICATING LIQUORS.—Following the decision of the United States Supreme Court that the Wilson Act did not affect interstate shipments of liquor until final delivery by the carrier, *Rhodes* v. *Iowa,* 170 U. S. 412, (1898), Congress passed the Webb-Kenyon Act, 37 Stat. at L. 699 (1913). Meantime, in 1913, 35 Stat. at L. 1136, Sec. 239, it was enacted that it should be a penal offense for any carrier or other agent, in connection with the interstate carriage of intoxicating liquors, to collect the purchase price from the consignee, or in any manner act as agent of buyer or seller, except in the actual transportation or delivery thereof. After this act carriers and banks refused to act as collection agents in such sales, and dealers resorted to the plan of consigning liquor which had been ordered from prohibition states, to their own order, mailing the bill of lading to an agent, with instructions to deliver the same upon payment of the accompanying draft by the purchaser. In *Danciger* v. *Cooley,* U. S. Supreme Court, Adv. O. 139, Jan. 7, 1919, it was held that this was in violation of Sec. 239, *supra,* and of course illegal. The shipment was made before 1913, and so did not involve the Webb-Kenyon Act.

The Kansas Supreme Court, 98 Kan. 38, 484, from which this case was an appeal, had decided that the transaction was an illegal sale, and therefore the principal could not collect from the agent the proceeds of the violation of the law. On this point the Federal Court held the right of a principal to recover such money from an agent was a question of local law and could not be re-examined by the court.

It is a general rule that an agent cannot dispute his principal's title, and this is so even when the agent seeks to set up the illegality of the transaction. He cannot for that reason steal the money and set his principal at defiance. *Baldwin Bros.* v. *Potter,* 46 Vt. 402. But the courts are not in agreement on this matter, especially where the principal is engaged in a business that is against the public policy of the State. *Mexican Int. Banking Co.* v. *Lichtenstein,* 10 Utah 338 (a lottery business). The Kansas court agrees with this view and does not limit it to cases involving public policy. *Alexander* v. *Barker,* 64 Kan. 396.

BILLS AND NOTES—CERTIFICATES OF DEPOSIT.—A certificate of deposit was purchased by a bank 11½ months after its date. It was issued "subject to the rules of the Savings Department," as it showed on its face. It bore interest if left 6 months, but interest was to cease one year from date. *Held,* the certificate was negotiable and was taken by the bank in due course, since (1) subjecting it to the rules of the Savings department did not make it payable out of a particular fund nor deprive it of the requisite certainty, (2) although it was in effect a promissory note payable on demand, the reasonable time within which it was required to be presented was indicated by the time at which interest ceased, namely, 12 months from date. *White* v. *Wadhams,* (Mich. 1918) 170 N. W. 60.

The first point here decided, as to the effect of subjecting the certificate of deposit to the rules of the savings department, is one which does not seem to have been heretofore passed upon by any court of the last resort. But the decision is in harmony with the common financial practice. The second point, that the termination of the running of interest fixes the time within which it must be negotiated, is in accord with the general rule stated in the books that interest bearing notes do not call for such prompt presentation as demand paper which bears no interest. Daniel on Neg. Inst. (6th ed.) § 610; Byles on Bills *213; Randolph on Commercial Paper, § 1097. The case of *Kirkwood* v. *First National Bank,* 40 Neb. 484, involved exactly the same question upon a similar certificate of deposit, and the decision was the same.

CARRIER'S LIABILITY ON BILLS OF LADING FOR WHICH NO GOODS WERE DELIVERED—WHAT LAW GOVERNS.—The law's delays are not entirely of the past. On Jan. 7th, 1919, the United States Supreme Court pronounced what may be the final judgment on an action arising in June, 1900, *M. K. & T. Ry. Co.* v. *Sealy,* Adv. O. 123. Defendant at first insisted that a Missouri shipment was governed by Missouri and not Kansas law, the action having been brought in Kansas. It was not until 1913 that the defendant company claimed that the transaction was governed by Federal law. This was doubtless due to the fact that it was in that year that the case of *Adams Express Co.* v. *Croninger,* 226 U. S. 491, decided that by the Carmack Amendment Congress had shown its intent to take over the whole subject of limitation of liability by carriers of goods in interstate shipments, and that therefore all state laws as to such shipments were entirely superseded. The court held that the claim in this case could not be maintained, because the Federal question was not seasonably raised, and also because the Carmack Amendment does not apply to a shipment made six years before its passage. The Kansas court having three times decided adversely to defendant, 78 Kan. 758, 84 Kansas 479, 98 Kan. 225, the writ of error was dismissed.

As to the liability of the common carrier on fraudulent bills of lading, issued without receipt of any goods, see 16 MICH. LAW REV. 402, 411. The passage by Congress of the so-called Uniform Bill of Lading Act, the Pomerene Act of August 29, 1916, 39 Stat. at L. 538, has changed the common law rule, rigidly adhered to by about half the States and by the U. S. Supreme Court, *Shaw* v. *Ry.,* 101 U. S. 557, *Friedlander* v. *Ry.,* 130 U. S. 416, in favor of the negotiability rule of *Bank of Batavia* v. *R. R. Co.,* 106 N. Y. 195, which made the carrier liable on a bill of lading to a *bona fide* holder for value, notwithstanding no goods were received. As nearly half the States have placed on their statute books this bill of lading act, the prevailing rule in the United States now accords with the New York rule, and the decision of the Kansas court in the instant case. Plaintiff was allowed to recover of the carrier his advances on the bills of lading to the extent they had not been repaid, notwithstanding the bills covered 27 carloads of grain, not one bushel of which was ever shipped.

CARRIER'S LIABILITY—WRITTEN NOTICE OF CLAIM FOR DAMAGES.—That it is lawful for a common carrier of goods to stipulate for complete freedom